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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 595

WILLIAM PESSER, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner, William Presser, respectfully prays for writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia, entered on October 27, 1960, affirming the judgment of the District Court of the United States for the District of Columbia.

The Opinion Below

The opinion of the United States District Court of Appeals for the District of Columbia, has not yet been reported, but a copy of said opinion is attached hereto and prayed to be taken as a part hereof, marked Appendix No. 1.

Jurisdiction

The opinion of the United States Court of Appeals for the District of Columbia was rendered on the 27th day of October, 1960. The petitioner filed a Petition For Rehearing en banc, in the United States Court of Appeals for the District of Columbia, which was denied on November 22, 1960, marked Appendix No. 2. Jurisdiction to issue the writ is found in the provisions of Section 240(a) of the Judicial Code (28 U.S.C.A., Sec. 1254).

Questions Presented

I

Whether the witness before a Senate Committee here waived his constitutional right to decline to answer further questions to which he asserted his constitutional right against self-incrimination because he had answered two prior questions dealing with his compliance with the subpoena served upon him.

II

Whether the witness was properly ordered to answer the question for which he was indicted.

III

Whether the question, for which he was indicted, "You have destroyed no records since then?", and to which he claimed his privilege under the Constitution, was pertinent.

Constitutional Provision

Amendment 5:

> No person shall • • • be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law • • •

Statute Involved

Title 2 United States Code, 192:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000.00 nor less than $100.00 and imprisonment in a common jail for not less than one month nor more than twelve months.

Statement

Petitioner, William Presser, was charged in a one count indictment with contempt of Congress (Title 2 United States Code 192). (3A).*

The petitioner, William Presser, received in Cleveland, Ohio, a forthwith subpoena on March 23, 1958, to appear before the Senate Select Committee on Improper Activities in the Labor or Management Field and bring with him his personal records and books. The petitioner was told that he would receive notice later as to an exact date. On September 17, 1958, the petitioner was questioned concerning his compliance with the subpoena as follows:

"The Chairman. Has the witness complied with it? First, are you now ready to comply with the subpoena?

Mr. Presser. I have complied to the best of my ability.

The Chairman. What have you done in compliance with it? (The witness conferred with his counsel.)

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* References suffixed "a" are to the Appendix filed by petitioner in the Court of Appeals, nine copies of which have been filed in this court.

Mr. Presser. May I have the question again, sir?

The Chairman. What have you done? You said you have complied to the best of your ability. What have you done in compliance?

Mr. Presser. I have made available all records I could get together.

Mr. Presser. I have delivered to the committee everything I had available and could lay my hands on.

The Chairman. At the time the subpoena was served?

Mr. Presser. Yes sir.

The Chairman. You have destroyed no records since then?

Mr. Presser. I respectfully decline to answer the question and assert my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. Now, then, you said you had complied to the best of your ability. The best of your ability would be to deliver records, produce them as ordered by the subpoena, such records as you had, and not destroy them. I ask you the question again: Have you destroyed any of the records called for by this subpoena?

Mr. Presser. I respectfully decline to answer the question and assert my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. You are ordered—with the permission of the committee the Chair orders and directs you to answer that question.

Mr. Presser. I honestly believe that if I am forced to answer the question I will be forced to be a witness against myself in violation of my rights under the fifth amendment of the United States Constitution.

The petitioner was indicted for not answering the question "You have destroyed no records since then," although

he was not ordered to answer that question but a question thereafter.

Reasons for Granting the Writ

The Court of Appeals has ~~interrupted~~ misapplied an important Constitutional Provision in apparent conflict with the applicable decisions of this Court.

1. *Waiver.* The petitioner respectfully submits that he did not waive his privilege under the Fifth Amendment of the Constitution of the United States by answering the two prior questions with regard to his compliance to the subpoena which was served upon him. The inquiry concerning his compliance with the subpoena had at that time been completed. He was then asked the following question "You have destroyed no records *since then?*" We do not believe any petitioner can waive his rights to answer incriminating questions because he has answered other questions on the same subject matter, but here in any event the petitioner was being asked for the first time about a *new subject* and the petitioner therefore cannot be said to have waived his privilege by answering the said two prior questions.

In investigations by Congressional Committees, more answers would be received, we submit, if the doctrine of waiver was not so strictly interpreted by the Committees as that often makes a witness decline to answer numerous questions so as to not waive his privilege to the one question where he rightfully fears incrimination. *Brown* v. *United States* 356 U.S. 148, *Rogers* v. *United States*, 340 U.S. 367, *Arndstein* v. *McCarthy*, 254 U.S. 138, *Curcio* v. *United States*, 354 U.S. 118.

2. *Direction to Answer.* The petitioner was never ordered to answer the question for which he was indicted, *Quinn* v. *United States*, 349 U.S. 155, but was directed to answer an obviously different question. The question contained in the indictment does not limit itself to records subpoenaed, but includes any records, even those made after March 23, 1958